

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 492 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PANDYA HARENDRABHAI BALDEVBHAI

Versus

SONI MINABEN SHANKERLAL

Appearance:

MR AM PAREKH for Petitioner

MS SADHANA SAGAR for Respondent No. 1

PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 30/03/98

ORAL JUDGEMENT

1. Heard Ld.Advocate Mr.A.M.Parekh appearing for petitioner and Ld.APP-Ms.B.R.Gajjar for respondent No.2. Ms.Sadhana Saggar appeared for Respondent No.1.

2. The petitioner has approached this court being aggrieved and dissatisfied by the order passed by the

Ld.Sessions Judge, Mehsana, dated 19.9.97 whereby the Cri.Misc.Appln No.588/97 made by present petitioner to transfer the Cri.Case No.5339/96 from the court of Ld.JMFC, Court No.7, Mehsana to anyother court on the facts and circumstances stated in the said application was rejected and the petitioner is directed to pay compensatory costs of Rs.1,000/- to the respondent No.1 for filing vexatious application.

3. The petitioner filed Cri.Case No.5339/96 against the respondent No.1 under section 138 of Negotiable Instruments Act. That pending the proceedings the petitioner moved Cri.Misc.Appln.No.588/97 in the court of Ld.Sessions Judge, Mehsana contending that the Ld.JMFC, Court No.7, Mehsana before whom the Cri.Case No.5339/96 is fixed for hearing has shown bias against the present petitioner. That Ld.Sessions Judge has called for the record as well as remarks of the Ld.JMFC and having considered the record as well as the remarks of the Ld.JMFC in the context of submissions made on behalf of the present petitioner has come to conclusion that the petitioner has failed to satisfy the court that it was expedient and in the interest of justice to withdraw the said criminal case from the Court No.7 of Ld.JMFC, Mehsana to anyother court. That considering the conduct and vexatious allegations made by the petitioner against the court, the Ld.Sessions Judge has ordered the petitioner to pay compensatory costs of Rs.1,000/- within 7 days to the respondent No.1.

4. Ld.Advocate Mr.Parekh appearing for the petitioner has having failed to persuade me to hold that the Ld.Sessions Judge has erred by not transferring the said case to anyother court from the court of Ld.JMFC, Court No.7, Mehsana furtherurged that in case the Ld.Sessions Judge has erred by awarding compensatory costs of Rs.1,000/- . That the Ld.Sessions Judge has no jurisdiction to award the costs more than Rs.250/as prescribed under section 408 read with section 407(7) of Cr.P.C.

5. On scrutiny of impugned order in the context of provisions of section 408 it appears that the Ld.Sessions Judge has through oversight awarded costs of Rs.1,000/instead of Rs.250/- and hence I hold that impugned order needs to be reviewed to that extent only.

6. On the basis of above stated discussion the impugned order passed by the Ld.Sessions Judge, Mehsana, dated 19.9.97 in Cri.Misc.Appln.No.588/97 is reviewed to the extent of awarding costs of Rs.250/- instead of

Rs.1,000/-. Rest of the order is confirmed as it is.
Rule is made absolute accordingly. No costs.

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